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June 13, 2014

Chief Craig Carter
Escondido Police Department
1163 North Centre City Parkway
Escondido, CA 92026

**Re: Fatal shooting of Mr. William Daniel Mayes on June 5, 2013 by San Diego Police
Officers Zachary Pfannenstiel, Arturo Lovio, Nestor Hernandez, Jonathan DeGuzman
and Sergeant Marc Pitucci; Escondido Police Department Case No. 13-6916;
DA Special Operations Case No. 13-076PS; Deputy District Attorney Assigned: Paul
Azevedo**

Dear Chief Carter:

We have reviewed the reports and other materials compiled by your agency's Robbery/Homicide Unit concerning the fatal shooting of Mr. William Daniel Mayes by San Diego Police Officers Zachary Pfannenstiel, Arturo Lovio, Nestor Hernandez, Jonathan DeGuzman and Sergeant Marc Pitucci on June 5, 2013. A District Attorney Investigator responded to the scene and was briefed by Escondido Police Investigators. This case was presented to the District Attorney's Office for review on January 16, 2014.

Summary

On the night of June 5, 2013, San Diego Police officers and detectives attempted to arrest Mr. William Daniel Mayes. Mayes tried to evade arrest by driving away in his Ford Explorer. Officer Pfannenstiel rammed his patrol car into Mayes' vehicle. Mayes pointed a shotgun in the direction of officers who then fired at Mayes. Mayes was struck multiple times and died at the scene. The Metropolitan Arson Strike Team responded. They recovered and detonated numerous improvised explosive devices recovered from Mayes' person and vehicle.

Persons Involved

Mr. William Daniel 'Danny' Mayes was 37 years old at the time of this incident and lived in the City of San Diego with his father.

Officer Zachary Pfannenstiel and Officer Jonathan DeGuzman were in full uniform and assigned to the Gang Suppression Team. Detective Nestor Hernandez, Detective Arutor Lovio, and Sergeant Marc Pitucci were assigned to the Robbery Unit. Each wore a tactical police vest that was clearly marked with the word "POLICE" on the front and back.

Background

William 'Danny' Mayes was suspected of physically and mentally abusing his father. The father reported his son's violent behavior to the San Diego Police Department. The father feared for his own safety and said 'Danny' Mayes used drugs in the past and thought his son might be mentally ill. The father told a detective his son had manufactured a handgun and a bomb. He also said 'Danny' installed a camera outside of the residence to view anyone approaching and threatened to "shoot it out" with police if they ever went to the house. The father said he did not want police to go to his residence because he did not want any innocent police officers to get hurt or killed. A family friend corroborated the father's statements and said he witnessed Mayes in possession of a homemade handgun and several pipe bombs. The friend told police Mayes was usually armed.

Officer Involved Shooting

A plan was devised by police to attempt to safely arrest Mayes. The plan involved having a friend of the Mayes family telephone Mayes and asked for help with a flat tire. The friend instructed Mayes to meet at the Park & Ride lot, located at 3300 Del Lago Boulevard in the City of Escondido. Several marked SDPD vehicles were strategically assembled at a nearby location to take Mayes into custody when he arrived. Plain clothes detectives driving unmarked police cars followed Mayes to the prearranged location.

As Mayes approached the parking lot, marked SDPD vehicles entered the area. When Mayes detected the presence of the police, he drove his vehicle around a transit bus and sped out of the lot by driving over a traffic island and sidewalk. Mayes continued speeding across Del Lago Boulevard over the sidewalk on the opposite side of the street and crashed into a concrete retaining wall. Officer Pfannenstiel rammed his patrol car into Mayes' vehicle, striking the driver's side door, pinning Mayes' vehicle against the wall. Pfannenstiel's police car was positioned perpendicular to Mayes' vehicle. Pfannenstiel, Hernandez, Lovio and Pitucci positioned themselves around Mayes' vehicle and saw Mayes point a weapon at them. They fired their pistols at Mayes. DeGuzman believed Mayes was shooting and also fired at Mayes. Mayes was struck by the gunfire.

Sergeant Grubb controlled the shooting scene and had Officer Pfannenstiel back his car out to allow other officers to render aid to Mayes. An arrest team approached and removed Mayes from his vehicle. They recovered his homemade shotgun. When they noticed an improvised explosive device on the floorboard and a backpack on the back seat of Mayes' vehicle, they retreated to a safe distance and left Mayes on the ground next to his vehicle. Mayes died at the scene.

Officer Pfannenstiel's Statement

Officer Pfannenstiel said before the arrest, he attended a briefing led by Sergeant Marc Pitucci. From the information presented, Pfannenstiel learned Mayes was wanted for elder abuse and had allegedly constructed several pipe bombs and handguns, including a rapid fire Tec 9 handgun. Mayes allegedly vowed not to be taken into custody alive. The officers planned on arresting

Mayes at a safe location away from his house. They reviewed overhead maps of the Park & Ride in Escondido. Pfannenstiel was assigned to block traffic at the intersection of Del Lago Boulevard and Avenida Magoria.

Pfannenstiel saw Mayes driving a Ford Explorer. Mayes was followed by several police vehicles. Pfannenstiel took his position at the intersection and saw Mayes' vehicle turn, then speed away from the other officers. Mayes drove over the lane median, made a wide southbound turn onto Del Lago and crashed into a planter retaining wall. Pfannenstiel thought Mayes was trying to get away and possibly run over the detectives. Pfannenstiel rammed into the driver side of Mayes' SUV. Pfannenstiel pinned Mayes' vehicle against the wall. Pfannenstiel got out from his car and stood at his open police car door. Pfannenstiel yelled, "Show me your hands!" Mayes did not comply but Pfannenstiel could see Mayes made eye contact with him. Mayes reached for his own waistband and it appeared Mayes was trying to get his gun out. Pfannenstiel saw Mayes had a grip on a black gun and Mayes leaned back, over his center console as he continued trying to pull the gun out from his waistband. Mayes' head was by the passenger seat while his legs and feet were fully extended near the driver side emergency brake. Pfannenstiel thought Mayes was pointing at the gun towards him and was going to shoot him through the driver door. Pfannenstiel fired at Mayes until he saw Mayes slump over.

Detective Hernandez's Statement

Detective Hernandez said he learned Mayes was wanted for elder abuse and recalled receiving information that, according to two different sources, Mayes threatened to, "Kill the cops or have the cops kill him." Hernandez was also aware of the information regarding Mayes constructing pipe bombs and being seen with a Tec 9 handgun.

When the phone call was made to Mayes as planned, Hernandez and other detectives followed Mayes from the residence to the Park & Ride on Del Lago Boulevard in Escondido. Hernandez saw Mayes drive into the Park & Ride lot at the same time a transit bus was driving out. Once Mayes made it out of the lot, he lost control and struck a wall across the street. The front end of Mayes' vehicle was off the ground and the back tires were spinning.

Hernandez got out from his vehicle and ran toward Mayes. Hernandez saw Mayes point the barrel of a gun at him. At that point a marked police car rammed Mayes' vehicle. The glass on the driver side window of Mayes' vehicle shattered. Hernandez saw Mayes lying back across his front seat while pointing a weapon at him and the uniformed officer. Hernandez fired his handgun at Mayes until he saw Mayes had stopped moving.

Detective Lovio's Statement

Detective Lovio was also aware of the information relating to Mayes regarding bombs and guns. Lovio was assigned to stop northbound traffic on Del Lago while Mayes was taken into custody. Mayes drove into the lot. Lovio took his position on Del Lago Boulevard and got out of his truck. Lovio looked over his shoulder and saw Mayes' vehicle had turned and jumped the curb into the parking lot. Mayes sped out of the lot and eventually crashed into a wall.

Lovio approached Mayes' vehicle on foot from in front of the vehicle. Lovio saw the tires on Mayes' vehicle were spinning. Lovio expected Mayes to escape by running over Lovio. Lovio saw Mayes raise the barrel of a gun. A marked police car drove into the driver side of Mayes' SUV and jammed it against a wall. Mayes continued to raise the barrel of gun. Lovio fired several rounds at the windshield of Mayes' vehicle.

Officer DeGuzman's Statement

Officer DeGuzman was working with his partner, Officer Cassie Erickson. DeGuzman was the driver of their police car. DeGuzman and his partner were supposed to help take Mayes into custody in the parking lot of the Park & Ride in Escondido. Mayes sped out of the lot and DeGuzman saw another marked police car ram Mayes' vehicle. DeGuzman stopped his car and got out. DeGuzman heard several gunshots. DeGuzman approached and saw Sergeant Pitucci standing near a police car and firing his gun at Mayes' driver side door. DeGuzman thought Mayes was shooting at the driver's side of the police car. DeGuzman stood to the right side of Pitucci and saw Mayes' left arm was raised while Mayes was looking at the officer. DeGuzman fired three shots toward Mayes. DeGuzman stopped firing when he saw Mayes dropped his left arm and stopped moving.

Sergeant Pitucci's Statement

Sergeant Pitucci supervised the surveillance and helped plan the arrest of Mayes. Mayes was wanted for elder abuse and manufacturing weapons and bombs. A plan (previously described above) was devised to arrest Mayes. They discussed the Boston Marathon bombing incident which occurred two months prior including that those suspects threw improvised explosive devices at their pursuing officers. It was agreed that if Mayes posed an immediate threat, officers were authorized to use their police vehicles to ram Mayes' vehicle.

When Mayes saw a marked police car, Mayes drove around the bus and sped out of the lot. After hitting a curb, Mayes' vehicle went airborne and lost control. Mayes ran into a wall across the street. Pitucci stopped his own unmarked police vehicle at the entrance to the lot and ran toward Mayes' vehicle. Pitucci saw the tires on Mayes' vehicle were spinning as if Mayes was stepping on the accelerator. A marked police car smashed into Mayes' vehicle, pinning it against the wall.

Pitucci stood at the passenger side of the police car that rammed Mayes. Pitucci saw the long black barrel of Mayes' weapon come up. The barrel was pointed in the direction of Hernandez, Lovio and Pfaffenstiel. Pitucci then drew his handgun and shot Mayes. Pitucci fired his weapon until Mayes leaned backwards in a non-threatening position.

Witness Statements

Fifteen civilian witnesses consisting of persons standing and sitting in the Park & Ride lot, as well as persons riding in the North County Transit District bus which was driving out of the

parking lot when Mayes and the officers were entering, saw various portions of the events. Some witnesses saw Mayes' vehicle enter and then speed out of the parking lot. The witnesses all reported seeing Mayes' vehicle being chased by police and then hearing several shots being fired from their positions across the street.

Eleven law enforcement witnesses consisting of uniformed officers and plain clothes detectives that took part in the surveillance and planned arrest of Mayes also witnessed various portions of the events.

Investigation

The crime scene was secured for safety purposes. The Metro Arson Strike Team (MAST) Bomb Squad technicians arrived and detonated seven improvised explosive devices at the scene and collected another seven improvised explosive devices prior to any evidence being collected. The explosions disturbed many items of evidence, including casings. The investigation determined Mayes was armed with a homemade shotgun carried in a sling around his torso. Mayes possessed a total of three homemade handguns, seventeen improvised explosive devices (pipe bombs), multiple rounds of live shotgun and handgun ammunition and two knives.

Mayes received seventeen gunshot wounds. The wounds were to Mayes' head, neck, chest, right forearm, left upper arm and forearm, right leg and left leg. The total number of shots fired by the five officers was forty-six. The video and audio recording from the cameras at the Park & Ride Terminal and on the NCTD bus were reviewed for this investigation. The cameras captured the shooting event from across the street as well as the sounds of the gunshots. A toxicology report on Mayes tested negative for drugs of abuse or alcohol.

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or end his effort to make an arrest because of that person's resistance. Penal Code section 196 declares that homicide is justifiable when committed by public officers when necessarily committed in overcoming actual resistance in the discharge of any legal duty.

Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self-defense is available to any person. Homicide is justifiable in accordance with Penal Code 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

Chief Craig Carter
June 13, 2014
Page 6 of 6

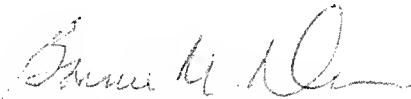
Conclusions

During this incident, several San Diego Police officers and detectives attempted to arrest Mr. William Mayes. They were aware he could be armed with guns and explosives and had expressed he would not peacefully surrender to police. Mayes sped away in his vehicle and crashed into a retaining wall. Mayes pointed a shotgun in the direction of Officers Pfannenstiel, Hernandez and Lovio. Sergeant Pitucci and the officers saw the shotgun and fired at Mayes. DeGuzman saw the shooting and believed Mayes was shooting at the officers. Mayes was struck several times and died at the scene.

Based on these circumstances, it is apparent that Officers Pfannenstiel, Hernandez, Lovio, Deguzman and Sergeant Pitucci fired in self-defense and/or the defense of the others. They therefore bear no criminal liability for their actions.

A copy of this letter, along with the materials submitted for our review will be retained in our files.

Sincerely,



BONNIE M. DUMANIS
District Attorney
County of San Diego

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November 24, 2014

Chief Craig Carter
Escondido Police Department
1163 North Centre City Parkway
Escondido, CA 92026

Re: Fatal shooting of Mr. Aaron Lee Devenere on January 26, 2014, by San Diego Police Officer Rick Butera; Escondido Police Department Case No. 14-1049; DA Special Operations Case No. 14-011PS; Deputy District Attorney assigned: Patrick McGrath

Dear Chief Carter:

We have reviewed the reports and other materials compiled by your agency concerning the fatal shooting of Mr. Aaron Lee Devenere by San Diego Police Officer Richard Butera on January 26, 2014. A District Attorney Investigator responded to the scene and was briefed by Escondido Police Investigators. This case was presented to the District Attorney's Office for review on April 25, 2014.

Summary

On January 26, 2014, Mr. Devenere took his girlfriend hostage and forced her to drive her pickup truck while he rode as passenger. Devenere called 9-1-1 and said he was armed with a handgun and a bomb. Devenere threatened to injure the hostage if officers tried to stop the truck. San Diego police officers pursued the truck into Escondido, where they flattened the truck's tires. Devenere placed his right arm around the hostage's head, preventing her from leaving the truck. Butera fired one shot with a rifle and fatally struck Devenere in the head.

Persons Involved

Mr. Aaron Lee Devenere was 27 years old and lived in San Diego. SDPD Officer Richard Butera had been a police officer for 11 years when this incident occurred. He was assigned to the Western Patrol Division and was in full uniform.

Background

Aaron Devenere and Lauren L. knew each other for five months. Lauren L. said she was aware Devenere was married and believed Devenere's wife was aware of their relationship. Devenere was released from jail on January 23, 2014, and ordered to begin a rehabilitation treatment program on January 25, 2014. Early in the morning January 26, 2014, Devenere arrived at his girlfriend's residence and said he wanted a ride. Devenere's girlfriend consented and drove her Toyota pick-up truck with Devenere as passenger.

At 6:56 a.m., a San Diego police officer stopped the truck for a traffic violation. Mr. Devenere stepped out of the truck with his face covered by an item of clothing and faced the officer. The officer ordered Devenere to return to the truck. Devenere jumped back into the truck as it sped away. The officer pursued the truck and called for help.

Mr. Devenere called the 9-1-1 operator during the pursuit and said he was pointing a gun at his girlfriend. Devenere stated he was armed with a handgun and explosives. Devenere said he kidnapped his girlfriend and threatened to harm her if police stopped the truck. Devenere added he would break his girlfriend's fingers if officers did not comply with his demands. Officers continued the pursuit and used tire deflation devices to stop the truck. At 7:37 a.m., the truck came to a stop on the right shoulder of 2100 Centre City Parkway in Escondido.

Officer Involved Shooting

Officers conducted a felony vehicle stop and ordered Devenere to exit the vehicle with his hands in the air. Devenere failed to comply. Devenere moved to the driver's side of the truck's cab and grabbed his girlfriend. Officers saw Lauren L. struggling to escape from Devenere's grasp. Lieutenant Darryl Hoover directed Officer Butera to arm himself with his long rifle and take a position within range of the truck. Hoover told Butera if he had a shot on the suspect to take it. Butera took a shooting position to the south and west of the truck, using the front of a police car for cover and support. Butera aimed through his scope and fired one shot, striking Devenere in the head and killing him.

Officer Butera's Statement

Officer Butera said he was assigned to patrol and recognized the initial radio call as a rolling hostage situation. Butera volunteered to respond because he had the collateral duty of being a member of the SWAT Primary Response Team and also had past sniper training. When the pursuit came to a stop, Lt. Hoover told him to get into position. Butera could hear Lauren L. screaming and saw her trying to get out of the truck. Devenere had his right arm around Lauren L.'s head. Devenere was placing Lauren L. between him and the police officers. Butera aimed at Devenere through his rifle scope. Devenere was not complying with the primary officer's commands. Butera saw Devenere's arms were down low and his left arm appeared to be crammed into Lauren L.'s ribcage. Lauren L. continued to scream and appeared to be trying to escape from the truck. Butera said, "At this point I believe that he's going to kill this woman right now. His threats he made with explosives, with the gun, with great bodily injury...If I don't act now, he's going to kill her." Butera said he had a clear shot and fired one round.

Lieutenant Hoover's Statement

Hoover heard the broadcast of the pursuit and stop on the radio, including the radio dispatcher's updates regarding Devenere's threats to harm the hostage driver. Hoover directed pursuing officers to deploy tire deflation devices to stop the truck. The truck's tires were flattened and it came to a stop on the right shoulder of the road. Officers gave Devenere commands to surrender. Devenere initially placed both of his hands out the passenger window but then retracted them. Hoover saw Devenere move to the left part of the truck's cab. Hoover said Devenere, "Immediately went at the driver. Jumped on the driver." Hoover said Devenere

looked out the rear window and had a “crazed look” on his face. Hoover could no longer see Lauren L. in the truck.

Hoover instructed Officer Butera to get into a position where Butera could make a rifle shot if the situation arose. Thereafter, Hoover heard one shot and realized Butera shot Devenere. The hostage, Lauren L., opened the driver’s door, maneuvered her way out from under Devenere, and ran back to the awaiting officers while sobbing.

Victim’s Statements

Lauren L. said Mr. Devenere lived a couple of blocks away from her. Devenere arrived at her house early in the morning and needed a ride, “to get away from here.” Lauren L. agreed to give Devenere a ride in her truck and noticed he seemed distraught, nervous and on edge. Devenere was on his cell phone and Lauren L. overheard him speaking with someone about not wanting to go to rehab. She began driving on the I-15 freeway when an officer pulled her over. Lauren L. stopped her vehicle on the shoulder and watched as a police officer approached her car through her rear view mirror.

Devenere suddenly turned towards her with his right hand under his sweatshirt. He pushed whatever was in his right hand into her rib cage and told her she needed to drive so she would not get hurt. Lauren L. said she drove away because she was scared and thought Devenere had a gun. Lauren L. was crying and hysterical as she drove the truck North on I-15. Devenere was speaking with someone on his cell phone and saying he was armed with a gun and had explosives. Lauren L. heard Devenere say she would be shot if the cops did not comply with his demands. Lauren L. asked Devenere what was happening but he would not answer.

At one point during the phone call, Devenere grabbed her hand and said he was going to break her fingers to make a point to the cops. The police continued following her. She drove over a spike strip in Escondido. Lauren L. stopped the truck and tried to stick her hands out the driver window but could not reach out. Devenere had her by the neck and twisted her head. Lauren L. complained about the pain and Devenere let go. Devenere was squeezing her hand. Lauren L. cried as Devenere said he was sorry he put her through this. Lauren L. heard Devenere say he was going to get out of the truck and give up. Lauren L. then heard a gunshot. There was blood everywhere and Devenere collapsed. Lauren L. did not know if Devenere shot himself or if he was shot by the police.

Lauren L. was released from the hospital after the incident and said her right pinky finger was not broken. Lauren L. said the truck involved in this incident belonged to her. She owned no weapons or explosives.

Witness Statements:

Ms. Gomez and her two young brothers witnessed the stop from their residence, west of Centre City Parkway. Gomez recorded the events with her iPhone camera. Gomez saw the truck come

to a stop with approximately 8 police vehicles behind it. Gomez saw a police officer with a rifle and heard a single gunshot. A few seconds later, Gomez saw a female exit the driver side of the truck and run to the awaiting officers. The female was screaming hysterically.

Sixteen law enforcement witnesses consisting of uniformed officers from the San Diego Police Department, Escondido Police Department and Sheriff's ASTREA unit that took part in the pursuit and planned arrest of Devenere witnessed various portions of the events.

Investigation

The crime scene was secured and an investigation was conducted by the Escondido Police Department. The investigation determined Devenere was not armed with a weapon during this incident. Devenere received one gunshot wound to his head. The audio recordings from the SDPD dispatchers, CHP dispatchers as well as the cameras on the ASTREA helicopter and witness Gomez's iPhone were reviewed for this investigation. The Gomez iPhone camera captured the shooting event from across the street as well as the sound of the rifle shot. The ASTREA camera captured portions of the pursuit and stop but the ASTREA camera did not record the shooting itself. The distance of Officer Butera's rifle shot was approximately 51 feet. Butera was armed with a Remington Model 700, Tactical .308 caliber rifle with scope. The bullet casing was recovered from an area consistent with Butera's stated location. Toxicology testing detected amphetamine, methamphetamine and cannabinoids in Mr. Devenere's system.

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force.

Under California law, peace officers may use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. Penal Code section 835a states the officer need not retreat or end his effort to make an arrest because of that person's resistance. Penal Code section 196 declares that homicide is justifiable when committed by public officers when necessarily committed in overcoming actual resistance in the discharge of any legal duty.

In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. Ninth Circuit Court of Appeals, in the case of *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which deadly force may be used:

[P]olice may use only such force as is objectively reasonable under the circumstances. An officer's use of deadly force is reasonable only if 'the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.' All determinations of unreasonable force 'must embody allowance for the fact

that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” [Citations omitted.]

Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self-defense and the defense of another is available to any person. Homicide is justifiable in accordance with Penal Code 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

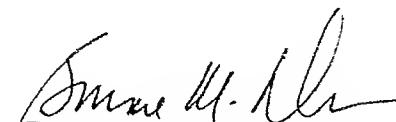
Conclusions

During this incident, Mr. Devenere was the passenger in a truck driven by his girlfriend. Devenere ordered Lauren L. to flee from the police and claimed he was armed with a gun and explosives. Devenere threatened to harm Lauren L. if police stopped him. Officers stopped the truck and could see Lauren L. being restrained by Devenere.

Based on these circumstances, Officer Butera reasonably thought Lauren L. could be seriously injured or killed. Mr. Devenere claimed he was armed with a gun and explosives when he held Lauren L. as a hostage and threatened to cause serious harm to her. Butera fired at Devenere to prevent injury or death to Lauren L. and acted in reasonable defense of another. He therefore bears no criminal liability for his actions.

A copy of this letter, along with the materials submitted for our review will be retained in our files

Sincerely,



BONNIE M. DUMANIS
District Attorney
County of San Diego

BMD/PM:cg

cc: Captain Albert Guaderrama
San Diego Police Department
Homicide Division